(3)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 244 OF 2006

APPLICANT

1679/06
Filed on 18/04/06
by Shri Ashok Soni
Advocate
R/o D.R. (J)

Smt. Shakila Begum, aged about 40 years, Wife of Juber Ahmed, Resident of Old Bus Stand, Main Road, Pendra Road, Police Station House Pendra Road, District Bilaspur (C.G.).

VERSUS

NON-APPLICANTS

1. State of Chhattisgarh, Through: The District Magistrate, Bilaspur (C.G.).

2. Smt. Geeta Gupta, aged about 45 years, Wife of Shri Madan Lal Gupta, Resident of Near State Bank, Rest House Road, Pendra Road, District Bilaspur (C.G.).

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3. Gyan Singh Otti, ageda bout 60 years, Retired Tahsildar, Resident of Village Bhadi, Tahsil Pendra, District Bilaspur (C.G.).

CRIMINAL REVISION UNDER 397 READ WITH 401 OF THE CODE OF CRIMINAL PROCEDURE, 1973

(47)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Revision No.244/2006

Smt. Shakila Begum

Vs.

State of Chhattisgarh and two others

Post for Order : 19 .07.2006

Sd-/
Dilip Raosaheb Deshmukh
Judge

(48)

HIGH C.OURT OF CHHATTISGARH AT BILASPUR

Cr.Revision No.244/2006

Before : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Smt. Shakila Begum

Vs.

State of Chhattisgarh and two others

Shri Ashok Soni, Counsel for the applicant

Shri Ashish Shukla, Government Advocate for the State/non-applicant No.1

Shri Rajesh Pandey, Counsel for the non-applicant No.2.

Shri Sourabh Dangi, Counsel for the applicant No.3.

O R D E R

(Passed on 19 .07.2006)

This Criminal Revision is directed against the order dated 23rd March 2006 passed by Shri Ramashankar Prasad, Additional Sessions Judge, Fast Track Court, Pendra Road in Criminal Revision No. 47/2006 whereby the dismissal of an unregistered complaint under Section 203 Cr.P.C. (filed by the non-applicant No.2 herein) vide order dated 9.1.2006 passed by the Judicial Magistrate First Class, Pendra Road, was set aside.

2. Brief facts are that on 27.4.2005 a complaint was filed by the non-applicant No.2 herein under Section 466 and 420 of the I.P.C. before the Judicial Magistrate First Class, Pendra Road. It was alleged that in the election to the post of the President of the Nagar Panchayat, Gaurela, the applicant herein had in collusion with the non-applicant No.3 herein, the then Naib Tahsildar, Pendra Road had

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obtained and filed with her nomination papers, a forged caste certificate purporting to have been issued Revenue Case No.208/B-121/03-04, dated 1.9.2004.

3. The complainant examined herself under Section 200 Cr.P.C. on 7.12.2005 and did not lead any further evidence in support of the complaint. On 6.1.2005 the complainant filed certain documents to substantiate that as per register of Revenue Cases for the year 2003-04 maintained in the Court of Naib Tahsildar, Pendra Road, no such caste certificate, as mentioned aforesaid, had been issued by the non-applicant No.3 herein.

4. The learned Judicial Magistrate First Class after hearing the arguments held that the complainant had merely filed some photocopies of the caste certificate alleged to have been issued by the non-applicant No.3 herein in collusion with the applicant herein for being used at the time of filing the nomination papers in the aforesaid election. The learned Magistrate held that no inference could be drawn against the applicant on the basis of the photocopies of the aforesaid caste certificate. It also held that the complainant despite being given an opportunity did not lead any evidence in support of her statement under Section 200 Cr.P.C., therefore, in the absence of sufficient evidence the complaint was liable to be dismissed.

5. The non-applicant No.2 herein preferred a Criminal Revision against the aforesaid order and surreptitiously did not join the applicant and the non-applicants No. 3 herein or the non-applicant No.1 State of Chhattisgarh as respondents. In the revision it was shown that there was no respondent. The revisional Court ignored the

aforesaid fact and after perusing the certified copies of the documents filed by the complainant on 6.1.2005 came to the conclusion that in the revenue case register for the year 2003-04 of the Court of Naib Tahsildar of Pendra Road no case was registered in the name of applicant herein-Shakila Begum at serial No.208-B and drew a conclusion that the allegations in the complaint *prima facie* revealed an offence under Section 468 and 471 I.P.C. whereas the complaint was initially filed for offence under Section 466 and 420 of the I.P.C. Consequently, the order dated 9.1.2006 passed by the Judicial Magistrate First Class, Pendra Road was set aside.

6. In this Revision, it was urged by the learned counsel for the applicant while supporting the order dated 9.1.2006 passed by the J.M.F.C., that the evidence of the complainant under Section 200 Cr.P.C. did not disclose the commission of an offence as alleged by the complainant. Shri Ashish Shukla, learned Government Advocate and also Shri Saurabh Dangi, learned counsel for non-applicant No.3 argued in support of the Order dated 9.1.2006 passed by the Judicial Magistrate First Class, Pendra Road. On the other hand, learned counsel for the non-applicant No.2 urged that the documents filed by the complainant on 6.1.2005 clearly revealed that the applicant herein had, in collusion with the non-applicant No.3, got a bogus caste certificate issued in her favour and had used it while filing the nomination papers in the aforesaid election. It was urged that the test under Section 203 Cr.P.C. for dismissal of a complaint was not satisfied, and therefore, the first revisional Court was wholly justified in setting aside the impugned order. It was also urged that in the event this Court came to the conclusion that there was no sufficient evidence to justify issuance of process against the

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applicant and non-applicant No.3 herein, this Court may, while remanding the matter to the Judicial Magistrate First Class, Pendra Road, order further enquiry and direct the J.M.F.C., Pendra Road to give an opportunity to the non-applicant No.2 herein to adduce evidence under Section 200 Cr.P.C.

7. Having heard rival submissions, I have perused the record. Section 200 Cr.P.C. provides that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. Section 203 Cr.P.C. is as follows:

> "203. **Dismissal of complaint.**— If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

Thus, before dismissing the complaint under Section 203 Cr.P.C. the Magistrate has to consider the following:

a) Statement on oath, (if any) of the complainant;

b) Statement on oath, (if any) of the witnesses; and

c) The result of the enquiry or investigation under Section 202 Cr.P.C.

8. In the present case, vide order dated 27.4.2005 the Magistrate had directed the concerned Police Station to report whether any action had been taken on the report lodged by the complainant at Police Station, Gaurela. On 1.6.2005 a report was sent

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from Police Station Gaurela that the report of the non-applicant No.2 herein was being enquired into. A further direction was given on 1.6.2005 to S.H.O. Police Station Gaurela to inform whether a first information report had been registered at Police Station on the complaint of non-applicant No.2 herein. On 4.6.2005 a report was received from Police Station, Gaurela that first information report had not been registered on the complaint of the non-applicant No.2 herein. On 7.6.2005 an application was filed by the complainant requesting the Magistrate to order investigation in the complaint lodged by the non-applicant No.2 herein under Section 156(3) Cr.P.C. However, the learned Judicial Magistrate First Class did not deem it fit to exercise discretion under Section 156(3) Cr.P.C. and proceeded to give an opportunity to the complainant to adduce any evidence under Section 200 Cr.P.C. in support of the complaint, if she so desired. The order dated 7.6.2005 is not under challenge in this revision.

9. In this view of the matter, since the complainant did not adduce evidence of any witnesses despite being given an opportunity by the learned trial Judge, the dismissal of the complaint by the learned Judicial Magistrate First Class has to be tested only on the touch stone of the statement on oath of the complainant and the documents filed by the complainant.

10. The complainant had in her statement under Section 200 Cr.P.C. stated that the certificate submitted by the applicant herein was numbered as 228. There is a positive assertion to that effect by the complainant in her statement under Section 200 Cr.P.C. Despite sufficient time having elapsed after the filing of complaint on

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27.4.2005 and before the order dated 9.1.2006, no efforts were made by the complainant to requisition the certificate filed by the applicant herein before the Returning Officer or to get a report submitted in that regard. During the course of the arguments, it was urged that an application under Section 91 Cr.P.C. had been filed before the J.M.F.C. Pendra Road for requisitioning the Tahsildar and Returning Officer, Pendra Road with the relevant documents. However, this application does not bear any date of filing or any endorsement by the Magistrate. The order sheets also do not show that any such application was filed by the complainant before 9.1.2006 i.e. the date of the impugned order. It may be that such an application came to be filed at some point of time after the impugned order dated 23.3.2006 was passed by the Additional Sessions Judge, Pendra Road, in Criminal Revision No.47/2006. Therefore, it does not substantiate the contention of the learned counsel for the applicant in any manner.

11. If the statement on oath of the complainant is to be believed, the certificate used by the non-applicant No.2 bearing numbered 228 was of the Court of Naib Tahsildar, Pendra Road. If this be true, then the documents filed by the complainant before the J.M.F.C. on 6.1.2005 do not in any manner show whether caste certificate registered at no. 228 had been issued by the Court of Naib Tahsildar, Pendra Road in favour of the applicant herein or not since the certified copy of the revenue case register for the year 2003-04 shows the cases registered from Sl.No.204 to 214 only and not beyond that. It was the duty of the complainant to requisition the relevant documents from the Returning Officer in the election of the President of Nagar Panchayat, Gaurela. The photocopies of caste

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certificate filed by the non-applicant No.2 before the J.M.F.C. along with complaint shows that it is the photocopy of an attested copy by the Notary. It by itself do not lead to any such inference that the caste certificates got issued by the applicant herein were issued in collusion with the non-applicant No.3 herein and were bogus. The Revenue Case number printed on the photocopies is also not clearly legible. In this view of the matter, the learned Judicial Magistrate First Class rightly concluded that the complainant after having been given sufficient opportunity had failed to produce evidence to substantiate the allegations in the complaint and no inference could be drawn on the basis of the photocopies of an attested copy by the Notary, for proceeding against the accused-persons. Thus, the Judicial Magistrate First Class, Pendra Road was wholly justified in dismissing the complaint under Section 203 Cr.P.C.

12. In the result, this revision deserves to be allowed. The impugned order dated 23.3.2006 passed by the Additional Sessions Judge, Pendra Road, in criminal Revision 47/2006 is set aside while maintaining the order dated 9.1.2006 passed by the J.M.F.C. Pendra Road.

Sd-/
Dilip Raosaheb Deshmukh
Judge